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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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U.S. COMMODITY FUTURES  
TRADING COMMISSION,

Plaintiff,

-against-

16-CV-4120 (VEC)

HAENA PARK, YUL KASEMAN,  
PHAETRA CAPITAL GP LLC a/k/a  
ARGENTA CAPITAL GP LLC,  
PHAETRA CAPITAL MANAGEMENT  
LP a/k/a ARGENTA CAPITAL LLC, and  
ARGENTA GROUP LLC

Defendants.

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CONSENT ORDER FOR PERMANENT INJUNCTION AND OTHER RELIEF  
AGAINST HAENA PARK, PHAETRA CAPITAL GP LLC, PHAETRA CAPITAL  
MANAGEMENT LP, AND ARGENTA GROUP LLC

On June 2, 2016, Plaintiff United States Commodity Futures Trading Commission (“Commission” or “CFTC”) filed a Complaint (“Complaint”) against Haena Park (“Park”), Yul Kasemen (“Kaseman”), Phaetra Capital GP LLC (“Phaetra GP”), Phaetra Capital Management LP (“Phaetra Management”), and Argenta Group LLC (“Argenta”, and, collectively with Phaetra GP and Phaetra Management, “Corporate Defendants”) seeking injunctive and other equitable relief, as well as the imposition of civil penalties, for violations of the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1-26 (2012), and the Commission’s Regulations (“Regulations”) promulgated thereunder, 17 C.F.R. § 1.1 *et seq.* (2017).

On July 8, 2016, Park was charged in a two-count indictment in the Southern District of New York, alleging wire fraud and commodities fraud in connection with Park’s fraudulent trading scheme. *United States v. Park*, No. 1:16-cr-00473 (S.D.N.Y. filed July. 8, 2016). The

instant case was stayed by this Court on July 13, 2016, pending the outcome of Park's related criminal case in New York (#20). On January 13, 2017, Park pleaded guilty to one count of commodities fraud, and she was sentenced on July 11, 2017. The Court lifted the stay in this case on July 19, 2017 (#30).

## I. CONSENTS AND AGREEMENTS

To effect partial settlement of this action against Defendants Park, Phaetra GP, Phaetra Management, and Argenta (collectively, "Settling Defendants"), without a trial on the merits or further judicial proceedings, the Settling Defendants:

1. Consent to the entry of this Consent Order for Permanent Injunction and Other Relief Against Defendants Park, Phaetra Capital GP LLC, Phaetra Capital Management LP, and Argenta Group LLC ("Consent Order");
2. Affirm that they have read and agreed to this Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the CFTC or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Consent Order;
3. Acknowledge service of the summons and Complaint;
4. Admit the jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012);
5. Admit the jurisdiction of the CFTC over the conduct and transactions at issue in this action pursuant to the Act, 7 U.S.C. §§ 1-26 (2012);
6. Admit that venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012);
7. Waive:
  - (a) Any and all claims that they may possess under the Equal Access to Justice Act,

5 U.S.C. § 504 (2012) and 28 U.S.C. § 2412 (2012), and/or the rules promulgated by the CFTC in conformity therewith, Part 148 of the Regulations, 17 C.F.R. §§ 148.1-148.30 (2017), relating to, or arising from, this action;

(b) Any and all claims that they may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, §§ 201-253, 110 Stat. 847, 857-868 (1996), as amended by Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204-205 (2007), relating to, or arising from, this action;

(c) Any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief; and

(d) Any and all rights of appeal from this action.

8. Consent to the continued jurisdiction of this Court over them for the purpose of implementing and enforcing the terms and conditions of this Consent Order and for any other purpose relevant to this action, even if they now or in the future reside outside the jurisdiction of this Court;

9. Agree that they will not oppose enforcement of this Consent Order by alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waive any objection based thereon;

10. Agree that neither they nor any of their agents or employees under their authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact or Conclusions of Law in this Consent Order, or creating or tending to create the impression that the Complaint or this Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect their: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the CFTC is not a party. The Settling Defendants shall undertake all steps necessary to ensure that

all of their agents or employees under their authority or control understand and comply with this agreement;

11. Admit to all of the Findings of Fact in this Consent Order and all of the allegations in the Complaint.

12. In *United States v. Park*, No. 1:16-cr-00473 (S.D.N.Y. filed July 8, 2016), the related criminal action concerning the same facts set forth herein, Defendant Park pleaded guilty to: commodities fraud in violation of 7 U.S.C. §§ 6b(a)(1), 6b(a)(2), 13(a)(1), 13(a)(5), and 18 U.S.C. § 2 (Count 1). In connection with that plea, Defendant Park admitted the facts set out in the transcript of her plea allocution, a copy of which is attached as Exhibit A to this Consent Order, and those same facts are admitted as if set forth in this Consent Order;

13. Agree to provide immediate notice to this Court and the CFTC by certified mail, in the manner required by paragraph 103 of Part V of this Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against any of the Settling Defendants, whether inside or outside the United States;

14. Agree that no provision of this Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against any of the Settling Defendants in any other proceeding.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason for delay. The Court therefore directs the entry of the following Findings of Fact, Conclusions of Law, permanent injunction and equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), as set forth herein. The Findings and Conclusions in this Consent Order are not binding on any other party to this action. Nothing in the Findings and Conclusions in this Consent Order may be used to

establish, reduce, increase, eliminate or in any way affect the liability of any of the remaining Defendants in this action who are not parties to this Consent Order.

**THE PARTIES AGREE AND THE COURT HEREBY FINDS:**

**A. Findings of Fact**

**The Parties to this Consent Order**

15. Plaintiff Commodity Futures Trading Commission is an independent federal regulatory agency that is charged by Congress with administering and enforcing the Act, 7 U.S.C. §§ 1-26 (2012), and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1-190.1 (2017). The Commission maintains its principal office at Three Lafayette Centre, 1155 21<sup>st</sup> Street NW, Washington, D.C. 20581.

16. Defendant Haena Park is a founder of Phaetra GP, previously operating under the name of Argenta Capital GP LLC, and Phaetra Management. Park is also the President and Chairperson of Argenta Group LLC, and sole signatory on its bank account. At all times, and with respect to all conduct described in this Consent Order, Park exercised ownership and control over the Corporate Defendants. In addition, Park is the founder, and exercised ownership and control over several other entities, including Argenta Capital Management LLC, Phaetra Capital LLC (former known as Argenta Capital LLC), and Phaetra Capital Management GP, LLC (collectively “Other Corporate Entities”). From January 2010 through June 2016 (the “Relevant Period”), Park resided in New York, New York. From January 2014 through the present, Park is registered with the Commission as an Associated Person (“AP”) of Phaetra GP and Phaetra Management, but has never been registered in any other capacity with the Commission.

17. Defendant Phaetra Capital GP LLC (“Phaetra GP”) is a Delaware limited liability company with its principal place of business listed as New York, New York. Phaetra GP was

incorporated as Argenta Capital GP LLC in 2010 and renamed Phaetra Capital GP LLC on or about September 2013. Park and her partner Kaseman are the principals and sole employees of Phaetra GP and Phaetra Management, and control Phaetra GP's and Phaetra Management's operations, finances, accounts, and books and records. Park is the Chief Investment Officer and Managing Partner of Phaetra GP. Phaetra GP has been registered as a Commodity Pool Operator (CPO)<sup>1</sup> from January 2014 through the present.

18. Defendant Phaetra Capital Management LP is a Delaware limited liability company with its principal place of business listed as New York, New York. Phaetra Management was designated as "successor-in-interest" of Argenta Capital Management LLC, also founded by Park, on or about September 2013. Park is the Chief Investment Officer and Managing Partner of Phaetra Management. Phaetra Management has been registered as a CPO from December 2013 through the present.

19. Defendant Argenta Group LLC is a New York limited liability company with its principal place of business listed as New York, New York. Argenta was incorporated in 2010. Park is the president and chairperson of Argenta. Argenta has never been registered as a CPO or Commodity Trading Advisor ("CTA")<sup>2</sup> with the Commission.

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<sup>1</sup> A "commodity pool operator" ("CPO") means "any person—  
 (i) engaged in a business that is the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests, including any—  
 (I) commodity for future delivery, security futures product, or swap; . . . or  
 (ii) who is registered with the Commission as a commodity pool operator."

Section 1a(11) of the Act, 7 U.S.C. §1a(11) (2012).

<sup>2</sup> A "commodity trading advisor" ("CTA") means "any person who—  
 (i) for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of

### **3) Background**

20. During the Relevant Period, Park, as the control person for the Corporate Defendants and Other Corporate Entities, fraudulently solicited and accepted \$23,186,860 from over 50 individuals (“pool participants”) to participate in an unregistered commodity pool in Park’s personal bank account (the “Park Pool”) to trade foreign exchange (“forex”) and futures contracts.

21. Park lost approximately \$19.26 million through trading, and hid the losses from pool participants.

22. In soliciting potential and existing pool participants, Park, on behalf of the Corporate Defendants, falsely and fraudulently represented to pool participants that the Park Pool was continuing to make a profit, when in reality the Park Pool was losing money. Park, on behalf of the Corporate Defendants, also knowingly or recklessly distributed false account statements and performance reports to pool participants that represented that the Park Pool was earning profits during a period where no profits were made.

23. At all relevant times, Park was the Chief Executive Officer and control person of Phaetra GP and Phaetra Management. Park was also the Chairperson of Argenta and sole signatory on Argenta’s bank accounts.

### **4) Defendant Park’s Fraudulent Statements and Omissions**

24. During the Relevant Period, Park, individually and on behalf of the Corporate Defendants, solicited \$23,186,860 from at least 50 pool participants for the purpose of trading various forex and futures contracts through the Park Pool.

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trading in—

(I) any contract of sale of a commodity for future delivery, security futures product, or swap; . . .”

Section 1a(12) of the Act, 7 U.S.C. §1a(12) (2012).

A. Operation of the Park Pool

25. Park first opened a personal trading account at Future Commission Merchant Interactive Brokers (“IB Trading Account”) in November 2008. Beginning in January 2010, Park began soliciting funds from prospective pool participants and induced pool participants to transfer funds via wire into bank accounts in her own name and in the name of Argenta Group LLC, which was controlled by Park. By May 31, 2016, approximately 50 pool participants had transferred more than \$23 million to bank accounts controlled by Park.

26. During the Relevant Period, the Park Pool consistently suffered heavy losses through Park’s trading. The pool declined in value in 74 out of the 91 months it had operated, and suffered a cumulative loss of approximately \$19.26 million, or 99% of the value of the pool. On May 31, 2016, the total value of the Park Pool had declined to approximately \$196,000.

27. At Park’s instruction, pool participants wired funds directly to personal bank accounts held in Park’s name at Bank of America, J.P. Morgan and Citibank (collectively, “Park Personal Bank Accounts”), as well as an account at Citibank held in the name of Argenta Group LLC controlled by Park (“Argenta Bank Account”). Park transferred approximately \$21.5 million of the more than \$23 million wired by the pool participants into the IB Trading Account. She misappropriated the rest of the funds, or approximately \$1.74 million. The funds transferred to the IB Trading Account were used to effect futures and forex transactions. Park also withdrew a total of approximately \$1.83 million from the IB Trading Account.

28. At all relevant times, Park was the sole signatory on the Park Personal Bank Accounts and the Argenta Bank Account. She was also the sole person authorized to trade in the IB Trading Account. Accordingly, at all relevant times Park had personal knowledge of the total amount of funds accepted by the Park Pool from pool participants, the disposition of those



funds, as well as the number of trades effected on behalf of pool participants and the date each trade was made. As reflected in the daily activity statements for the IB Trading Account, Park actively traded commodity futures and forex each month throughout the Relevant Period.

B. Material Misrepresentations to Pool Participants

29. During the Relevant Period, Park made material misrepresentations and omissions regarding her trading expertise, profits, and the track record and performance of the Park Pool when soliciting funds from prospective pool participants. Park knowingly made misrepresentations and omissions in order to fraudulently induce prospective pool participants to deposit, maintain, or increase their deposits in the Park Pool.

30. Park represented to prospective pool participants that they were investing in a pooled “friends and family” fund run by Phaetra GP, Phaetra Management, or their predecessors and affiliates, rather than an unregistered commodity pool run out of the IB Trading Account. When Park made solicitations from prospective pool participants, she furnished them with charts purporting to contain actual performance data over the preceding months. In truth, the charts contained fabricated data that bore no relationship or resemblance to reality. At all relevant times, the Park Pool suffered heavy losses and declined steeply in value due to Park’s trading. Park never disclosed these losses to the existing and prospective pool participants.

31. For example, in April 2015, Park solicited funds from a prospective pool participant J.A., who resided in Baltimore, Maryland. During this solicitation, Park knowingly made false and fraudulent representations about the performance and track records of the Park Pool.

32. On or about April 2, 2015, Park emailed J.A. a document titled “Returns.pdf”, which Park represented showed the actual performance of an investment of \$1,000,000 made

in November 2009 under her management. The document falsely represented that, under Park's management, the initial investment of \$1,000,000 achieved a cumulative return of 393.2% and grew to \$4,778,229 by February 27, 2015. The chart also falsely showed that, in the 64-month period between November 2009 and February 2015, the purported investment suffered a loss in value in only four of the 64 months, and experienced growth between 0.2 % to 8.4% per month in 60 of the 64 months.

33. In truth, contrary to Park's representations, between November 2009 and February 2015, the Park Pool had lost approximately \$10.13 million as a result of Park's trading activities, and suffered losses in value in 48 out of the 64 preceding months. In August 2011, where Park claimed to have enjoyed the highest monthly gain of 8.4% in the value of her investments, her trading actually resulted in a *loss* of \$256,686 to the Park Pool, or a loss of over 88% of the total value of the pool for that month. Park knew or should have known that these representations regarding the track record and performance of the Park Pool were false because she was the sole person in control of and responsible for the IB Trading Account and the Park Pool at all relevant times. Park made these misrepresentations in order to fraudulently induce J.A. to invest in the Park Pool.

34. On or about April 1, 2015, Park induced J.A. to execute an "Agreement of Investment". The parties to the "Agreement of Investment" were J.A. and Park, as agent of Phaetra Capital Management LP, which Park represented to be the successor-in-interest to Argenta Capital LLC. The "Agreement of Investment" provided that J.A. would make an initial investment of \$700,000. The "Agreement of Investment" further falsely and fraudulently represented the following:

- a). Park's and Phaetra Management's fees would be limited to an annual fee of 2% of the principal, to be applied at the beginning of each fiscal year, and 10% of the

annual performance, to be applied at the end of each fiscal year;

- b). J.A.'s investment would be tracked by Park, and Park would send to J.A. a monthly statement showing monthly and year-to-date gains and losses on the principal invested; and
- c). Upon a notification of withdrawal by J.A., positions would be liquidated from the brokerage account by the end of the month and the resulting capital would be sent to J.A.

35. Based on Park's fraudulent representations, J.A. made an initial investment of \$700,000 and transferred the funds to Park via wire on or about April 2, 2015. Subsequently, between May 15, 2015 and September 18, 2015, J.A. made three additional investments totaling \$3.3 million. Each time J.A. re-invested, he and Park executed a new Agreement of Investment containing similar, and similarly fraudulent, language. Park transferred a portion of J.A.'s investment funds to the IB Trading Account and misappropriated the rest.

36. As another example, on or about January 4, 2016, Park solicited funds from a prospective pool participant A.D., who resided in London, United Kingdom, to participate in the Park Pool. During this solicitation, Park made false and fraudulent representations about the performance and track record of the Park Pool.

37. On or about January 6, 2016, Park and A.D. spoke on the phone regarding the possibility of investing in the Park Pool. After the call, Park emailed A.D. a document titled "Returns.pdf". In her email to A.D., Park referred to the "Returns.pdf" document as "performance data" and asked A.D. to keep the data confidential. The "Returns.pdf" document, similar to the document received by J.A. described above, consisted of a chart purporting to show the actual performance of an investment of \$1,000,000 made in November 2009. The document falsely represented that, under Park's management, an initial investment

of \$1,000,000 in November 2009 obtained a cumulative return of 514.2% and grew to \$6,142,448 by December 31, 2015. The chart also purported to show that, in the 74-month period between November 2009 and December 2015, the investment suffered a loss in value in only four of the 74 months, and experienced monthly growth between 0.2 % to 8.4% in 70 of the 74 months.

38. In truth, and contrary to Park's representations, by December 2015, the Park Pool had lost over \$16.34 million as a result of Park's trading activities. In the 74-month period between January 2009 and December 2015, the Park Pool lost value in 60 out of 74 months. Park knew or should have known that her representations regarding the track record and performance of the Park Pool were false because she was the sole person in control of and responsible for the IB Trading Account and the Park Pool at all relevant times. Park made these misrepresentations in order to fraudulently induce A.D. to invest in the Park Pool.

39. Based on Park's fraudulent representations and omissions, A.D. decided to invest in the Park Pool and transferred \$800,000 to Park via wire on or about January 11 and 13, 2016. A.D. also introduced his parents, R.D. and L.D., who resided in Edison, New Jersey, to Park. In January and April 2016, R.D. and L.D. made two investments totaling \$850,000 in the Park Pool. Park transferred a portion of these investment funds to the IB Trading Account and misappropriated the rest.

40. During the Relevant Period, Park, individually and as agent Phaetra GP and Phaetra Management, both orally and in writing, falsely represented to pool participants that their share of the Park Pool had increased in value due to successfully trading, when in fact the value of the Park Pool had suffered heavy trading losses. During the Relevant Period, Park failed to disclose that the Park Pool had only 17 winning months out of 91 months, and suffered a cumulative loss of nearly \$19.4 million. On May 31, 2016, the total value of the

Park Pool had declined to approximately \$196,000.

41. Park hid these losses from pool participants, and knowingly misrepresented to pool participants on multiple occasions that their total principal investment was intact and that trading was profitable, when Park knew this was not true. Park knowingly issued false account statements to pool participants reporting profitable earnings in the pool, when she knew that there were no such profitable earnings, and that there was instead an overall significant decrease in the net value of the pool due to the combined effect of trading losses, Park's misappropriation, and payments to some pool participants in the manner akin to a Ponzi scheme. In addition, Park omitted to tell prospective and existing pool participants (a) that she was presently losing money trading commodities and futures and had consistently lost money trading commodities and futures in the past; and (b) that she traded only a portion of pool participant funds and misappropriated the remainder.

42. For example, from April 2015 to June 2016, Park provided J.A. with false and fraudulent monthly statements, which contained fictitious data on the performance of J.A.'s investments. These monthly statements falsely state that the value of J.A.'s investment increased to \$5,103,622 by April 29, 2015, or a cumulative return of 35.7% in value. According to these false statements, J.A.'s investment had increased in value in each of the twelve months, with a monthly return ranging from 0.9% to 4.7%. In truth, during the same period, the Park Pool had lost value in each of the preceding twelve months and suffered a cumulative loss of approximately \$7 million.

43. Based on Park's misrepresentations and omissions of the value and performance of J.A.'s investments, J.A. made additional deposits in the Park Pool after his initial investment and continued to maintain his investment with the Park Pool.

44. Similarly, from January 2016 to June 2016, Park sent to A.D. via email four false

and fraudulent monthly statements that contained fictitious data on the performance of A.D.'s investments. These monthly statements falsely stated that the value of A.D.'s \$800,000 investment had increased to \$863,397 by April 29, 2015, which was a cumulative return rate of 8.8% in value. On or about April 4, 2016, Park stated in an email to A.D. that "[w]e had a very good month". On or about May 5, 2016, Park stated in an email to A.D. that "[w]e had a good month". In truth, during the same period, the Park Pool lost value every month and suffered a cumulative loss of approximately \$2 million and Park failed to disclose these facts.

45. Based on Park's misrepresentations and omissions regarding the value and performance of A.D.'s investments, A.D. continued to maintain his investment with the Park Pool.

C. Material Misrepresentations to Investment Firm A

46. Park, individually and as the agent of Argenta Capital LLC ("Argenta Capital"), later renamed Phaetra Capital LLC, also made material misrepresentations and omissions regarding her trading expertise, profits, and the track record and performance of the Park Pool to employees and officers of an investment firm based in Louisville, Kentucky ("Investment Firm A"). Park knowingly made misrepresentations in order to fraudulently induce Investment Firm A to hire herself and Argenta Capital to manage Investment Firm A's funds as a CTA.

47. In December 2012, Kaseman introduced and recommended Park to J.F., then an employee at Investment Firm A. On or about December 11, 2012, on an introductory call with J.F., Park falsely and fraudulently represented that she had been managing about \$5 million of her own money at the time, that her own investments had a "30-35% annualized return" since 2010, and that her biggest monthly "drawdown", or a decline in the value of her investment, had been only 2.5%.

48. J.F. subsequently visited Park's apartment in New York on or about January 10,

2013, and further discussed Park's credentials, track record, and trading strategy. At this meeting, Park falsely and fraudulently represented that she was currently trading \$4.5 million of personal funds and "friends and family" money in commodity futures and forex accounts. Park also falsely represented that she had begun investing with \$1 million of her own money in 2009, and had grown her initial investment to \$3 million by January 2013.

49. In truth, and contrary to Park's misrepresentations, at the beginning of December 2012, the value of the positions in Park's IB Trading Account totaled only approximately \$868,852. By the end of December 2012, due to trading losses, the value in the IB Trading Account further declined to \$253,478 despite a deposit of \$149,000 that month, and to \$164,488 by the end of January 2013. Moreover, by month-end January 2013, rather than enjoying a 30-35% annualized return, Park had instead suffered cumulative losses of approximately \$4.96 million in value from the approximately \$5.13 million in net deposits in the IB Trading Account. Park failed to disclose these facts. Park knew that her representations regarding the track record and performance of her own trading and investments were false because she was the sole person in control of and responsible for the IB Trading Account and the Park Pool. Park made these misrepresentations in order to fraudulently induce Investment Firm A to hire her and Argenta Capital to manage Investment Firm A's funds.

50. As a result of Park's misrepresentations and omissions, on or about February 22, 2013, Investment Firm A entered into a Trading Advisor Agreement with Park, as the agent and manager of Argenta Capital, to manage a fund ("Master Fund") for the firm. Subsequently, Investment Firm A granted to Park and Argenta Capital the authority to trade \$5 million on behalf of the Master Fund. That trading authority was increased to \$15 million by the end of 2013. Park, as the agent and manager of Argenta Capital, managed a trading account held at Newedge USA, LLC on behalf of the Master Fund ("Newedge Account") from

March 2013 until June 2014 and traded commodity futures and forex contracts. Throughout this time, Park was the sole person authorized to trade in the Newedge Account for the benefit of the Master Fund.

51. During the course of Park's management, the Master Fund suffered trading losses of more than \$1.9 million. Due to poor performance, Investment Firm A terminated its relationship with Park and Argenta Capital on or about May 27, 2014. At the time of her departure, Park had been paid a total of approximately \$146,238 in management and performance fees.

D. False Statements to the NFA

52. The National Futures Association is a futures association registered with the Commission pursuant to Section 17 of the Act, 7 U.S.C. § 21 (2012). Membership in the NFA is mandatory for all persons and entities conducting business with the public in the U.S. futures industry, including CPOs and APs of CPOs. Pursuant to its official duties as a registered futures association, the NFA has developed a body of rules to safeguard market integrity, protect investors from fraud, and help futures entities and their APs meet regulatory responsibilities. NFA members are subject to audits and investigations by the NFA to ensure compliance with NFA rules, the Act, and Commission Regulations.

53. In furtherance of its official duties under the Act, the NFA conducts periodic audits and examinations of NFA members as a means of monitoring and assuring compliance with NFA rules, the Act, and Commission Regulations. In addition, pursuant to NFA rules, the Act, and Commission Regulations, CPOs are required to file with the NFA quarterly financial reports for each pool the CPO operates.

54. Park, individually and as the agent of the registered Phaetra GP and Phaetra Management (collectively "Phaetra entities"), made multiple false or misleading statements to



the NFA in statutorily required reports filed between January 2014 and June 2016 (the “reporting period”), and during an April 2016 NFA audit of the Phaetra entities.

55. Between May 20, 2014 and the present, the Phaetra entities, by and through its agents Park and others, filed at least 18 false written reports with the NFA. Despite that during the “reporting period”, Park solicited and received funds from pool participants on behalf of the Phaetra entities, the Phaetra entities, by and through Park, falsely represented to the NFA that, although registered as CPOs, they had not in fact been operating as CPOs or CTAs during the reporting period. Park knew these statements were false because she solicited funds from pool participants as the agent of the Phaetra entities during the reporting period, and used these funds to trade forex and commodity futures contracts.

56. On March 31, 2016, after the filing of the false quarterly reports, the NFA contacted the Phaetra entities to announce a routine, on-site examination on the activities of the firms to ensure the Phaetra entities were in compliance with their recordkeeping and financial requirements.

57. On April 4, 2016, NFA conducted an on-site examination of the Phaetra entities. During the examination, Park and others represented that i) neither of the Phaetra entities commenced business of any kind; and ii) Neither of the Phaetra entities, nor Park or any other person affiliated with the Phaetra entities, currently managed any third-party accounts.

58. Pursuant to a NFA document request issued prior to the on-site visit, the Phaetra entities, by and through Park and others, represented to the NFA on the same day of the on-site visit that the only proprietary or non-customer account maintained was Park’s IB Trading Account. During the onsite meeting, the Phaetra entities both furnished the NFA with letters stating that they were not doing any business to date. The letters state: “As of this date, we have not conducted any futures or forex business.”

59. Subsequent to the on-site examination and pursuant to a NFA request, Park provided the NFA with statements to the IB Trading Account for the period October 1, 2015 through March 31, 2016 via email in the evening of April 4, 2016. In the same email exchange, Park provided written representation that the activity in the IB Trading Account was proprietary in nature and comprised solely of her personal funds.

60. Park knew these statements were false because she had solicited funds from pool participants on behalf of the Phaetra entities. In addition, Park had been actively trading commodity futures contracts in the IB Trading Account throughout the reporting period.

## **B. Conclusions of Law**

### **1) Jurisdiction and Venue**

61. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), which provides that, whenever it shall appear to the CFTC that any person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation, or order promulgated thereunder, the CFTC may bring an action in the proper district court of the United States against such person to enjoin such act or practice, or to enforce compliance with the Act, or any rule, regulation or order thereunder.

62. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e) (2012), because the Settling Defendants resided in this jurisdiction and the acts and practices in violation of the Act occurred within this District.

### **2) Defendants Park, Phaetra GP, Phaetra Management, and Argenta Violated Sections 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C): Fraud in Connection With Commodity Futures Contracts**

63. By the conduct described in Paragraphs 1 through 60 above, Defendants Park, Phaetra GP, Phaetra Management, and Argenta cheated or defrauded or attempted to cheat or

defraud other persons; issued or caused to be issued false statements; and willfully deceived or attempted to deceive other persons in connection with the offering of, or entering into futures contracts and the margined or leveraged forex transactions set forth herein, by, among other things:

- a. Making false and fraudulent statements in the solicitation of prospective and actual pool participants, including sending the documents “Returns.pdf,” and “Agreement of Investment” as set forth above;
- b. misrepresenting the profitability of the Park Pool and failure to disclose the heavy losses by the Park Pool;
- c. misappropriating pool participant funds to pay out redemption or to pay for Park’s personal expenses;
- d. distributing false account statements and written and oral reports to pool participants;
- e. making fraudulent written and oral promises to redeem pool participants’ funds, which misrepresented the value of pool participants’ accounts and pool participants’ holdings; and
- f. failing to disclose to prospective and existing pool participants (i) that Park was losing money trading commodities and futures and had consistently lost money trading commodities and futures in the past; (ii) that Park traded only a portion of pool participant funds and misappropriated the remainder.

all in violation of Sections 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) (2012).

Defendants Park, Phaetra GP, Phaetra Management, and Argenta engaged in the acts and practices described above knowingly, willfully or with reckless disregard for the truth.

64. Park, directly or indirectly, controlled each of the Corporate Defendants, and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting the

Corporate Defendants' violations. Park is thereby liable for the Corporate Defendants' violations of the Act and Regulations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

65. The foregoing acts of fraudulent solicitation, misappropriation, omission and false statements by Park occurred within the scope of her employment, office or agency with the Corporate Defendants. Therefore, the Corporate Defendants are liable for Park's violations of the Act and Regulations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2017).

**3) Defendants Park, Phaetra GP, Phaetra Management and Argenta Violated Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C): Fraud in Connection with Forex Contracts**

66. By the conduct described in Paragraphs 1 through 60 above, Defendants Park, Phaetra GP, Phaetra Management, and Argenta cheated or defrauded or attempted to cheat or defraud other persons; willfully made or caused to be made false reports or statements; or willfully deceived or attempted to deceive other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery other than on or subject to the rules of a designated contract market, in violation of Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2012).

67. By the conduct described above, Defendants Park, Phaetra GP, Phaetra Management, and Argenta cheated or defrauded or attempted to cheat or defraud other persons; willfully made or caused to be made false reports or statements; or willfully deceived or attempted to deceive other persons in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, other than on or subject to the rules of a designated contract market, in violation of Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2012).

68. Sections 4b(a)(2)(A)-(C) of the Act apply to the forex transactions, agreements or contracts offered by Park and the Corporate Defendants as if they were futures contracts. Section 2(c)(2)(C)(iv) of the Act, 7 U.S.C. § 2(c)(2)(C)(iv) (2012).

69. For conduct on or after July 16, 2011, and during the Relevant Period, Defendants Park, Phaetra GP, Phaetra Management, and Argenta cheated or defrauded or attempted to cheat or defraud other persons; issued or caused to be issued false statements; and willfully deceived or attempted to deceive other persons in connection with offering of, or entering into futures contracts and the margined or leveraged forex transactions set forth herein, by fraudulently soliciting prospective and existing pool participants by making material misrepresentations and omissions, including but not limited to the fraudulent conduct described herein, in violation of Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2012).

70. Defendants Park, Phaetra GP, Phaetra Management, and Argenta engaged in the acts and practices described above knowingly, willfully or with reckless disregard for the truth.

71. Park, directly or indirectly, controlled each of the Corporate Defendants, and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting the Corporate Defendants' violations. Park is thereby liable for the corporate defendants' violations of the Act and Regulations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

72. The foregoing acts of fraudulent solicitation, misappropriation and false statements by Park occurred within the scope of her employment, office or agency with the Corporate Defendants. Therefore, the Corporate Defendants are liable for Park's violations of the Act and Regulations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2017).

**4) Defendants Park, Phaetra GP, Phaetra Management, and Argenta Violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1): Fraud by a Commodity Pool Operator**

73. During the Relevant Period, the Corporate Defendants, through Park, acted as CPOs by soliciting, accepting, or receiving funds from others while engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, for the purpose of, among other things, trading in futures contracts. Park acted as an Associated Person of a CPO because she was a partner, officer, employee, consultant or agent of a CPO in a capacity that involved the solicitation of funds, securities or property for participation in a commodity pool.

74. Section 4o(1) of the Act, 7 U.S.C. § 6o(1) (2012), prohibits CPOs from using the mails or any other means or instrumentality of interstate commerce to (A) employ any device, scheme or artifice to defraud any client or participant or prospective client or participant; or (B) engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or participant or prospective participant.

75. By the conduct described above, the Corporate Defendants, through Park, violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2012) by employing a device, scheme or artifice to defraud actual and prospective pool participants and engaging in transactions, practices, or a course of business which operated or operates as a fraud or deceit upon the pool participants or prospective pool participants.

76. Park, directly or indirectly, controlled the Corporate Defendants and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting the Corporate Defendants' violations. Park is thereby liable for the Corporate Defendants' violations of the Act and Regulations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

77. The foregoing acts of fraudulent solicitation, misappropriation and false

statements by Park occurred within the scope of her employment, office or agency with the Corporate Defendants. Therefore, the Corporate Defendants are liable for Park's violations of the Act and Regulations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2017).

**5) Defendant Park Violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B): Fraud by a Commodity Trading Advisor**

78. As set forth above, during the Relevant Period, Argenta Capital, later renamed Phaetra Capital LLC, through Park, acted as a CTA by, among other things, engaging in the business of advising Investment Firm A as to the value of or the advisability of trading in commodity futures contracts and forex for compensation or profit. Park acted as an Associated Person of a CTA because she was a partner, officer, employee, consultant or agent of a CTA in a capacity that involved soliciting client's or prospective client's discretionary accounts.

79. Argenta Capital, through Park, and Park, violated Section 4o(1)(A) and (B) of the Act, 7 U.S.C. § 6o(1)(A) and (B) (2012), in that they employed a device, scheme or artifice to defraud Investment Firm A or engaged or is engaging in transactions, practices, or a course of business which operated or operates as a fraud or deceit upon Investment Firm A.

80. Park, directly or indirectly, controlled Argenta Capital and did not act in good faith, or knowingly induced, directly or indirectly, the acts constituting Argenta Capital's violations. Park is thereby liable for Argenta Capital's violations of the Act and Regulations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

81. The foregoing acts of fraudulent solicitation, misappropriation and false statements by Park occurred within the scope of her employment, office or agency with Argenta Capital. Therefore, Argenta Capital is liable for Park's violations of the Act and Regulations pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Regulation 1.2, 17 C.F.R. § 1.2 (2017).

**6) Defendants Park, Phaetra GP, Phaetra Management, and Argenta Violated Section 4m(1)(A) and (B) of the Act, 7 U.S.C. § 6m(1)(A) and (B): Failure to Register as a CPO**

82. During the Relevant Period, the Corporate Defendants or their predecessors, through Park, engaged in a business that was of the nature of an investment trust, syndicate, or similar form of enterprise, and in connection therewith, solicited, accepted, or received from others, funds, securities, or property, either directly or indirectly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading a commodity for future delivery on or subject to the rules of a contract market or derivatives transaction execution facility, or property for a pooled investment vehicle that was engaged in forex transactions, thus making it a commodity pool operator as defined by Section 1a(11) of the Act, 7 U.S.C. § 1a(11) (2012).

83. During the Relevant Period, the Corporate Defendants, through Park, acted as a CPO because they solicited funds, securities, or property for a pooled investment vehicle that was not an eligible contract participant and engaged in forex transactions.

84. During the Relevant Period, the Corporate Defendants were not exempt from registering as a CPO.

85. During the Relevant Period, the Corporate Defendants, through Park, made use of the mails or any means of interstate commerce in connection with its business as a CPO. Phaetra GP failed to register as a CPO until January 2014, Phaetra Management failed to register as a CPO until December 2013, and Argenta never registered as a CPO, all in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).

86. Park controlled each of the Corporate Defendants directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, the Corporate Defendants'



acts. Therefore, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012), Park is liable for the Corporate Defendants' violations of Section 4m(1) of the Act, 7 U.S.C. § 6m(1) (2012).

**7) Defendants Park, Phaetra GP, Phaetra Management, and Argenta Violated Commission Regulation 4.20 (a)-(c), 17 C.F.R. §4.20(a)-(c): Failure to Operate Commodity Pool as a Separate Legal Entity, Improper Acceptance of Funds, and Commingling of Pool Funds**

87. Commission Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2017), requires a CPO to operate its commodity pool as a legal entity separate from that of the CPO.

88. Commission Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2017), requires that all funds, securities, or other property received by a CPO from a prospective or existing pool participant must be received in the commodity pool's name.

89. Commission Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2017), prohibits a CPO from commingling the property of any pool it operates with the property of any other person.

90. During the Relevant Period, the Corporate Defendants, through Park, violated Commission Regulation 4.20(a)-(c), 17 C.F.R. § 4.20(a)-(c) (2017), by: (i) failing to operate the commodity pool as a legal entity separate from Park's personal IB Trading Account; (ii) receiving pool participant funds in Park's own name, rather than in the name of the Park Pool; and (iii) commingling the property of the Park Pool with Park's personal funds in bank accounts held in her own name.

**8) Defendants Park, Phaetra GP, and Phaetra Management Violated Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4): False Statements to the NFA**

91. Park, individually and as the agent of the registered Phaetra entities, willfully made materially false statements to the NFA, and concealed material information from the NFA, in statutorily required reports and during oral communications with NFA staff during an NFA audit in furtherance of the NFA's official duties under the Act, in violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2012).

92. Specifically, as set forth above, Park, individually and as the agent of the Phaetra entities, falsely stated to NFA staff during an NFA audit and in statutorily required reports filed with the NFA that the Phaetra entities commodity pool did not operate during calendar years 2015 and 2016, and has never operated or solicited investor funds.

93. Park knew that these material statements were false since Park personally accepted funds from pool participants on behalf of the Phaetra entities, and Park actively traded commodity futures contracts in the IB Trading Account on behalf of pool participants during the Relevant Period, including in 2015 and 2016.

94. By making false statements to the NFA, and by concealing trading activity from the NFA, Park, individually and as the agent of the Phaetra entities, willfully falsified, concealed, and covered up by trick, scheme, or artifice material facts and made false writings or documents knowing the same to contain false statements, in violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2012).

95. Each of the false statements Park made to the NFA occurred within the scope of her office or employment with the Phaetra entities. Therefore, the Phaetra entities are liable for those false statements pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2012), and Commission Regulation 1.2, 17 C.F.R. § 1.2 (2017).

96. At all relevant times, Park controlled each of the Phaetra entities, directly or indirectly, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the Phaetra entities' violations of Section 9(a)(4) of the Act. Therefore, Park is liable for the Phaetra entities' violations of Section 9(a)(4) of the Act, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b) (2012).

### III. ORDER FOR PERMANENT INJUNCTION

#### IT IS HEREBY ORDERED THAT:

97. Based upon and in connection with the foregoing conduct, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2012), Defendants Park, Phaetra GP, Phaetra Management, and Argenta are permanently restrained, enjoined and prohibited from directly or indirectly:

- a. in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made on or subject to the rules of a designated contract market, for or on behalf of any other person – (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; or (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for the other person in violation of Sections 4b(a)(1)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(1)(A)-(C) (2012).
- b. in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or behalf of, or with, any other person, other than on or subject to the rules of a designated contract market – (A) to cheat or defraud or attempt to cheat or defraud the other person; (B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record; or (C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or

the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for the other person in violation of Sections 4b(a)(2)(A)-(C) of the Act, 7 U.S.C. §§ 6b(a)(2)(A)-(C) (2012).

- c. using the mails or any other means or instrumentality of interstate commerce, directly or indirectly to (A) employ any device, scheme or artifice to defraud any client or participant or prospective client or participant; or (B) engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or participant or prospective participant while acting as a commodity pool operator or commodity trading adviser, in violation of Sections 4o(1)(A) and (B) of the Act, 7 U.S.C. §§ 6o(1)(A) and (B) (2012);
- d. failing to operate any commodity pool they operate or intend to operate as a legal entity separate from their personal trading accounts in violation of Regulation 4.20(a), 17 C.F.R. § 4.20(a) (2017).
- e. receiving any pool participant funds in their own names, rather than in the name of the pool that they operate or that they intend to operate in violation of Regulation 4.20(b), 17 C.F.R. § 4.20(b) (2017).
- f. commingling the property of any pool that they operate or that they intends to operate with the property of any other person in violation of Regulation 4.20(c), 17 C.F.R. § 4.20(c) (2017).
- g. willfully falsifying, concealing, and covering up by trick, scheme, or artifice material facts and making false writings or documents knowing the same to contain false statements to the NFA, in violation of Section 9(a)(4) of the Act, 7 U.S.C. § 13(a)(4) (2012).

98. Defendants Park, Phaetra GP, Phaetra Management, and Argenta are also permanently restrained, enjoined and prohibited from directly or indirectly:
- a. trading on or subject to the rules of any registered entity (as that term is defined in Section 1a(40) of the Act, 7 U.S.C. § 1a(40) (2012));
  - b. entering into any transactions involving “commodity interests” (as that term is defined in Regulation 1.3(yy), 17 C.F.R. § 1.3(yy) (2017)) for Defendants Park, Phaetra GP, Phaetra Management, and Argenta’s own personal account or for any account in which they have a direct or indirect interest;
  - c. having any commodity interests traded on their behalf;
  - d. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity interests;
  - e. soliciting, receiving or accepting any funds from any person for the purpose of purchasing or selling any commodity interests;
  - f. applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2017); and/or
  - g. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2017)), agent or any other officer or employee of any person (as that term is defined in Section 1a(38) of the Act, 7 U.S.C. § 1a(38) (2012)), registered, exempted from registration or required to be registered with the Commission except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2017).

#### IV. STATORY AND EQUITABLE RELIEF

99. Settling Defendants shall pay, on a joint and several basis, restitution, plus post-judgment interest (“Restitution Obligation”) in an amount to be determined by the Court. Post-judgment interest shall accrue on any Restitution Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).

100. Settling Defendants shall pay, on a joint and several basis, a civil monetary penalty plus post-judgment interest (“CMP Obligation”) in an amount to be determined by the Court. Post-judgment interest shall accrue on any CMP Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Consent Order pursuant to 28 U.S.C. § 1961 (2012).

101. The Court shall determine the amounts of restitution and civil monetary penalty and the procedures for payment and distribution of these monetary sanctions by further order upon: (1) motion of the parties submitting to the Court a proposed consent order setting out their agreement on the amounts of restitution and civil monetary penalty to be paid by Defendants in this matter; (2) motion by the CFTC; and/or (3) hearing before this Court.

102. In connection with any CFTC motion for restitution and/or civil monetary penalties, and at any hearing held on such a motion: (a) Settling Defendants will be precluded from arguing that they did not violate the federal laws as alleged in this Consent Order; (b) Settling Defendants may not challenge the validity of their consents and agreements herein or this Consent Order; (c) solely for the purposes of such motion, the Findings of Fact and Conclusions of Law in this Consent Order shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, witness testimony, and documentary evidence, without

regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the CFTC's motion for restitution and/or civil monetary penalties, the parties may take discovery, including discovery from appropriate non-parties.

## V. MISCELLANEOUS PROVISIONS

103. Notice: All notices required to be given by any provision in this Consent Order shall be sent via overnight mail, return receipt requested, as follows:

Notice to the CFTC:

Deputy Director Paul G. Hayeck  
Commodity Futures Trading Commission  
1155 21st Street, N.W.  
Washington, D.C. 20581

Notice to Settling Defendants:

Haena Park  
41-42 24th Street, Apt 1406  
Long Island City, NY 11101

All such notices to the CFTC shall reference the name and docket number of this action.

104. Entire Agreement and Amendments: This Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify this Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

105. Invalidation: If any provision of this Consent Order or if the application of any provision or circumstance is held invalid, then the remainder of this Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

106. Waiver: The failure of any party to this Consent Order or of any pool participant at any time to require performance of any provision of this Consent Order shall in no manner

affect the right of the party or pool participant at a later time to enforce the same or any other provision of this Consent Order. No waiver in one or more instances of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

107. Waiver of Service, and Acknowledgement: Settling Defendants waive service of this Consent Order and agree that entry of this Consent Order by the Court and filing with the Clerk of the Court will constitute notice to the Settling Defendants of its terms and conditions. Settling Defendants further agree to provide counsel for the Commission, within thirty (30) days after this Consent Order is filed with the Clerk of Court, with an affidavit or declaration stating that Settling Defendants have received and read a copy of this Consent Order.

108. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees, including orders setting the appropriate amounts of restitution and civil monetary penalty, that may be entered herein, to entertain any suitable application or motion for additional relief within the jurisdiction of the Court, to assure compliance with this Consent Order and for any other purpose relevant to this action

109. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of this Consent Order shall be binding upon the Settling Defendants upon any person under their authority or control, and upon any person who receives actual notice of this Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with the Settling Defendants.

110. Authority: Defendant Park hereby warrants that Park is owner, manager and principal of Phaetra GP, Phaetra Management, and Argenta, and that this Consent Order has



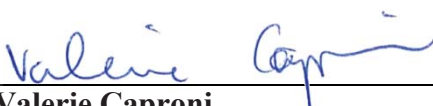
been duly authorized by Phaetra GP, Phaetra Management and Argenta and she has been duly empowered to sign and submit this Consent Order on behalf of Phaetra GP, Phaetra Management and Argenta.

111. Counterparts and Facsimile or Electronic Execution: This Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Consent Order.

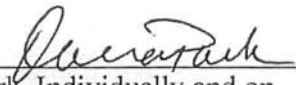
112. Settling Defendants understand that the terms of the Consent Order are enforceable through contempt proceedings, and that, in any such proceedings they may not challenge the validity of this Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby ordered to enter this *Consent Order For Permanent Injunction And Other Relief Against Haena Park, Phaetra Capital GP LLC, Phaetra Capital Management LP, and Argenta Group LLC* forthwith and without further notice.

**IT IS SO ORDERED** on this 7th day of \_\_\_\_\_ February, **2018**.

  
\_\_\_\_\_  
**Valerie Caproni**  
**United States District Judge**

CONSENTED AND AGREED TO BY:

  
\_\_\_\_\_  
Haena Park, Individually and on  
Behalf of Phaetra Capital GP LLC,  
Phaetra Capital Management LP, and  
Argenta Group LLC.

Date: 2/2/2018

  
\_\_\_\_\_  
LUKE B. MARSH  
Chief Trial Attorney  
GRETA GAO  
Trial Attorney  
U.S. Commodity Futures Trading Commission  
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(202) 418-5095 (Gao)  
ggao@cftc.gov

Dated 2/2/2018